

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Interim Application No.595 of 2024

In

Criminal Appeal No.138 of 2024

Suresh Sakharam Dharade

Aged 23 years, Occu: Student,

R/at. Esarthav, Tal. Akole,

District: Ahmednagar.

(at present lodged in Yerwada

Central Prison, Pune)

... Applicant

versus

1. The State of Maharashtra

At the instance of Manchar

Police Station, Tal. Manchar,

District: Pune.

C.R. No.344 of 2014.

(Notice to be served on the A.P.P.

High Court, Mumbai)

2. XYZ

R/o. Vadgaon Kashimbe,

Tal. Ambegaon, District: Pune,

Nos. R/o. Panvel, Navi Mumbai.

District: Solapur

... Respondents

Mr Ujwal Agandsurve, a/w. Mr Onkar Sukale, for the applicant.

Ms Manisha R Tidke, APP, for respondent No.1/ State.

Ms Suvarna Yadav, for respondent No.2 (appointed through legal aid).

Coram: R.N. Laddha, J.

Date: 7 February 2025.

P.C.:

Ms Suvarna Yadav is appointed as Advocate to espouse the cause of respondent No.2. Legal fees to be paid by the High Court Legal Services Committee. Applicant to furnish a copy of the interim application, Criminal appeal and other relevant papers, including the impugned judgment, to the Advocate so appointed.

2. The applicant faced trial in Special (POCSO) Case No.7 of 2015 and stood convicted for offences punishable under Sections 376, 363 and 506 of the Indian Penal Code ('IPC'), and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). In terms of section 42 of the POCSO Act, the applicant was sentenced to suffer rigorous imprisonment for ten years and pay a fine of Rs.8,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act. The applicant was also sentenced to suffer rigorous imprisonment for five years and pay a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 363 of IPC, and for one year and pay a fine of Rs.1,000/- (with default stipulations) for offence punishable under Section 506 of IPC. These sentences were directed to run concurrently.

3. Dissatisfied, the applicant preferred the present appeal

before this Court and by the instant application, the applicant seeks suspension of sentence and his release on bail.

4. Mr Ujwal Agandsurve, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, submits that the testimony of the prosecution witnesses lacks credibility and fails to inspire confidence. There was a significant delay in lodging the FIR and the key allegations do not align with the medical evidence. The learned Counsel, emphasising that the applicant was arrested on 6 December 2014 and released on bail on 13 May 2016, argues that as the applicant was on bail throughout the trial, he should receive the same treatment during the pendency of the appeal. The applicant was 23 years old at the time of the incident, and his total incarceration is more than two years. The applicant is ready to abide by any conditions this Court imposes, if released on bail.

5. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1, and Ms Suvarna Yadav, the learned Counsel appearing for respondent No.2, emphasises the gravity of the offence and contend that the victim was 15 years 9 months old at the time of the incident. The evidence on record strongly supports the prosecution's case and does not warrant suspension of sentence and the

applicant's release on bail.

6. This Court has considered the rival contentions and perused the record.

7. In ***Bhagwan Rama Shinde Gosai v. State of Gujarat***¹, the Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

8. In the present case, the total incarceration period is more

¹ (1999) 4 SCC 421.

than two years. The applicant was just 23 years old at the time of the incident. During the pendency of the trial, the applicant was on bail. The appeal has been filed in December 2024 and is unlikely to be heard immediately. Moreover, the applicant is ready to stay away from the jurisdiction of the concerned police station where the victim resides during the pendency of the appeal. In these circumstances, a case is made out for grant of suspension of sentence, pending the appeal and release on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 5 January 2024 by Special (POCSO) Judge, Khed-Rajgurunagar, Pune, in Special (POCSO) Case No.7 of 2015, is suspended during the pendency of the appeal, subject to the applicant executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(ii) The applicant shall refrain from entering the jurisdiction of the concerned Police Station where the victim resides during the pendency of the appeal.

(iii) The applicant shall keep the investigating officer updated of his residential address and contact details.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)